

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY

NATASHA N. CANNON and)	
SEAN P. CANNON,)	
)	
Plaintiffs,)	
v.)	C.A. No. CPU6-21-000465
)	
PAUL STILLMAN and HOME)	
MEDIC, LLC.)	
)	
Defendants,)	
v.)	
)	
MTN General Construction LLC,)	
)	
Third-Party Defendant.)	

Submitted: February 23, 2023
Decided: March 29, 2023

Douglas A. Shachtman, Esq. The Shachtman Law Firm 526 Beech Tree Lane Hockessin, DE 19707 <i>Attorney for Plaintiffs</i>	Jeffrey A. Young, Esq. Young & McNelis 300 South State Street Dover, DE 19901 <i>Attorney for Defendants</i>	Gary E. Junge, Esq. Schmittinger & Rodriguez, P.A. 414 South State Street Dover, DE 19903 <i>Attorney for Third-Party Defendant</i>
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DECISION ON THIRD-PARTY DEFENDANT'S MOTION FOR RECONSIDERATION
OF COMMISSIONER'S RECOMMENDATION

PROCEDURAL HISTORY AND FACTUAL BACKGROUND

On April 28, 2021, Plaintiffs, Natasha N. Cannon, and Sean P. Cannon ("Plaintiffs"), filed a Complaint against Defendants, Paul Stillman, and Home Medic LLC ("Defendants") alleging Breach of Contract, Breach of Warranty, Common Law Fraud, violations of the Consumer Fraud Act, Negligence, and Deceptive Practices in Consumer

Contracts. The Complaint alleges damages caused by Defendants who were contracted to do repairs to Plaintiffs' Laurel, Delaware home.

On July 13, 2021, Defendants filed an answer to Plaintiff's Complaint, a Counterclaim, and a Third-Party Complaint against their subcontractor MTN General Construction LLC ("Third-Party Defendant" or "MTN"). MTN is a Delaware construction company. On August 25, 2021, MTN was served by personal service upon its Registered agent and owner, Juan Nolasco.

On November 16, 2021, Defendants filed a Motion for Default Judgement against MTN after it failed to timely answer the Third-Party Complaint. The April 19, 2022 hearing on the Motion was continued by the Court because MTN did not receive notice of the scheduled hearing. The hearing was rescheduled for July 12, 2022, but was again continued at Defendants' request to October 4, 2022.

MTN's owner-agent Nolasco appeared at the October 4, 2022 hearing before the Commissioner. The Commissioner noted that Nolasco did not speak English and needed the assistance of a Spanish Interpreter. No interpreter was available to assist the parties or the Court, and so the hearing was rescheduled, yet again, to December 13, 2022.

On December 13, 2022, a hearing for the Motion for Default Judgment was finally held in this Court, with MTN's owner and an interpreter present. The Commissioner on the record recommended granting the Motion for Default Judgment due to MTN's failure to file a written response to the Complaint, and its failure to be represented by an attorney. On December 15, 2022, Gary E. Junge, Esq., entered his appearance on behalf of MTN. On January 25, 2023, the Commissioner filed his written Proposed Finding of Fact and Recommendation that the Motion for Default Judgment be granted.

On February 3, 2023, MTN filed the present Motion for Reconsideration of the Commissioner's Recommendation. Defendants filed their Response to the Motion on

February 13, 2023. The certified transcript of the hearing on the motion was lodged with the Court on February 22, 2023.

STANDARD OF REVIEW

A default judgment is a case-dispositive determination. When reviewing a commissioner's decision on a case-dispositive determination, the Court reviews the decision *de novo*. A judge may accept, reject, or modify in whole or in part the findings or recommendations made by the Commissioner.¹

DISCUSSION

Court of Common Pleas Civil Rule 60(b)(1) provides that the Court may relieve a party from a final judgment for “[m]istake, inadvertence, surprise, or excusable neglect...”² A motion for such relief is subject to the discretion of the trial court.³ In using this discretion, the Court liberally construes Rule 60 in favor of its long-standing preference to hear cases on the merits.⁴

Before a motion will be granted to relieve a party from final judgment, under Court of Common Pleas Civil Rule 60(b), the moving party must establish three (3) elements: “(1) excusable neglect in the conduct that allowed the default judgment to be taken; (2) a meritorious defense to the action that would allow a different outcome to the litigation if the matter was heard on the merits; and (3) a showing that substantial prejudice will not be suffered by the plaintiff if the motion is granted.”⁵

“‘Excusable neglect’ exists if the moving party has valid reasons for the neglect—reasons showing that the neglect may have been the act of a reasonably prudent person

¹ Ct. Com. Pl. Civ. R. 112(A)(4)(iv).

² *Id.*

³ *Perry v. Wilson*, 2009 WL 1964787 (Del. Super. July 8, 2009) (wherein, the Superior Court applied a rule identical to Ct. Com. Pl. Civ. R. 60).

⁴ *Keystone Fuel Oil Co. v. Del-Way Petroleum, Inc.*, 364 A.2d 826, 828 (Del. Super. 1976).

⁵ *Perry*, 2009 WL 1964787, at *1.

under the circumstances.”⁶ To determine whether a moving party's neglect is “excusable”, the Court may consider all surrounding circumstances.⁷

In the present case, MTN contends that it had not been able to meaningfully participate in this present action because of a language barrier as it’s owner-agent does not speak English and did not have the assistance of a Spanish interpreter until the December 13, 2023, hearing. A review of the record confirms that MTN was unable to meaningfully participate in responding to the Third-Party Complaint or the Motion for Default because its owner could not understand even the pleadings received, or what was being said by the Court, until the December 13, 2022, hearing in which the default judgment was recommended. Since then, MTN has complied with the Court’s rules, and has hired counsel to assist it in this action.

Defendants have offered little in opposition in their Response to MTN’s Motion for Reconsideration.⁸ Further, MTN has posited a meritorious defense in claiming that it and its few employees worked exclusively for and at the direction of Defendants, and were paid hourly and supplied tools by Defendants.⁹

Finally, the Court sees no substantial prejudice to the Defendants occasioned by the granting of this motion.

CONCLUSION

After a de novo review of this matter, the Court finds that Third-Party MTN’s failure to file a timely answer or other responsive pleading was due at least to excusable neglect, as well as the unavailability of an interpreter on a prior occasion that MTN attempted to appear via its non-English speaking owner.

⁶ Id.

⁷ Id.

⁸ Defendants/Third-Party Plaintiffs Response to third-Party Defendants MTN’s Motion for Reconsideration of Commissioner’s Order.

⁹ Third-Party Defendant’s Motion for Reconsideration of Commissioner’s Order.

Accordingly, MTN's motion for reconsideration is **GRANTED**. The recommendation for entry of default judgement is **REJECTED**. Third-Party Defendant MTN shall have twenty (20) days from the date of this decision to file it's answer of other responsive pleading.

IT IS SO ORDERED, this 28th day of March, 2023.



Kenneth S. Clark, Jr., Judge